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TAGS: [PREL](#) [PGOV](#) [PTER](#) [PINR](#) [NL](#)
SUBJECT: NETHERLANDS: EU'S MEK DECISION (C-RE8-01539)

REF: SECSTATE 83598

Classified By: Political-Economic Counselor Andrew C. Mann for reasons
1.5(b,d)

(S) On August 8, poloff reviewed reftel issues with Andrew van Wiggen and Kim de Jong in the Terrorism and New Threats division of the Netherlands MFA. Dutch responses follow reftel format. The Dutch would welcome additional information on the MEK from the USG, and recommend the USG also share this information with the French.

1A. (S) WHERE DOES EACH EU MEMBER STATE STAND ON THE EU'S DECISION TO KEEP THE MEK ON THE TERRORIST LIST?

(S) There were no strong objection to the MEK listing from any EU member. The UK abstained "to save face" due to their court,s finding that the MEK was no longer a terrorist group. The Dutch continue to believe the MEK is a terrorist organization based on intelligence reports. The group,s methods and commitment are unchanged. The MEK appears to be engaged in recruiting and fundraising, but appears also to be "under control" in Iraq. However, there is not enough unclassified information to support a public listing as a terrorist group.

1B. (S) DID FRANCE LIST THE MEK ON ITS DOMESTIC TERRORIST LIST?

(S) The French "surprised" the EU with a July court decision that there is enough evidence to prosecute the MEK. For the purposes of EU policy, this is sufficient to keep the MEK on the EU terrorist list. The UK Interior Ministry had listed the group in 2001, but a UK court ruled in 2008 that the MEK was inactive and had renounced violence. The Dutch were concerned after that ruling that the MEK would be dropped from the EU list. They also believe the French "sat on" the information they had about the MEK, though the French said they wanted to avoid jeopardizing their investigation.

1C. (S) PLEASE PROVIDE ANY ADDITIONAL INSIGHT ON WHETHER THE EU'S DECISION TO KEEP THE MEK ON THE LIST WAS THE RESULT OF FRANCE'S EFFORTS. HOW, IF AT ALL, WAS THE FRENCH PARLIAMENT DECLARATION ON 16 JULY IN FAVOR OF MIRYAM RAJAVI AND THE MEK TIED TO THE EU DECISION NOT TO DELIST THE MEK?

(S) The EU will list groups and individuals on the terrorist list if a "competent authority" lists the individual or group. In this case, the decision of the French court was sufficient. The action by the French parliament was irrelevant. See the EU facts sheet on terrorism listings released on July 15, 2008.

1D. (S) PLEASE PROVIDE ANY NEW INFORMATION ON THE EU'S COURT OF FIRST INSTANCE WITH RESPECT TO THE MEK CASE.

(S) The court did not decide whether the group or individuals were terrorists but whether a "competent authority" made that decision. The 2006 EU court decision on the EU terrorist list was based on a violation of procedural rights. The Dutch believe the court did not consider the new EU

procedures for terrorist designations, which require the designated individuals receive both notice of the designation and the right to appeal, and which also provide humanitarian exceptions to the sanctions in some circumstances. The Dutch are happy the MEK remains on the EU list, but the listing rests on a "dodgy legal basis." The court could rule against the listing because France is investigating individuals without clear links to the MEK. Such a ruling could jeopardize the credibility of the whole process. In addition, the Dutch are also concerned that a European court could rule on the UNSCR 1267 terrorist asset freeze process, possibly finding that the 1267 process violates international law (jus cogens) on due process protections. The Dutch are, therefore, promoting a "review panel" for the 1267 process in order to preserve it.

1E. (S) DOES THE EU PLAN TO REASSESS THE MEK LISTING IN SIX MONTHS DURING THE REQUIRED REVIEW? IF SO, WHICH EU MEMBER STATES WOULD SUPPORT OR OPPOSE DELISTING THE MEK?

(S) Yes, a review is required every six months. The Dutch intelligence service -- the French, and British services would likely agree -- believe the MEK is still a terrorist group. However, as a legal matter, a "competent authority" must make the designation to support an EU listing.

1F. (S) HOW QUICKLY MUST THE EU DELIST A TERRORIST GROUP ONCE THE MEMBER STATES SUPPORTING THE LISTING DOMESTICALLY DELIST IT? IF THE EU HAS A WINDOW IN WHICH IT IS REQUIRED TO IMPLEMENT THE DELISTING, CAN ANOTHER EU MEMBER STATE DOMESTICALLY LIST THE ENTITY AS A TERRORIST GROUP WITHIN THAT TIME PERIOD AND PRE-EMPT THE EU'S DELISTING, EFFECTIVELY

THE HAGUE 00000687 002 OF 002

KEEPING THE ENTITY ON THE EU LIST?

(S) n/a

1G. (S) IF AN EU MEMBER STATE DELISTS ONLY PART OF A TERRORIST ENTITY (FOR EXAMPLE, ONLY THE MILITARY WING), WHAT WOULD THIS MEAN FOR THE ENTIRE DESIGNATION OF THE ENTITY AT THE EU LEVEL? IS THE EU REQUIRED TO DELIST THE ENTIRE ENTITY, OR ONLY THE PART THAT HAS BEEN DELISTED DOMESTICALLY?

(S) n/a

1H. (S) OUR UNDERSTANDING IS THAT THERE MUST BE UNANIMITY FOR AN ENTITY TO BE ADDED OR REMOVED FROM THE EU TERRORIST LIST. ARE THERE MECHANISMS, SUCH AS ABSTENTION, IN PLACE IN CASE UNANIMITY CANNOT BE ACHIEVED?

(S) As a legal matter, it is unclear whether unanimity is required to "de-list" individuals. It,s also unclear whether unanimity is required to keep an individual or group "on" the list. Furthermore, it is unclear whether "keeping the old list" requires unanimity. The Dutch believe unanimity is required to take an individual or group off of the list. This appears to shift the burden of proof to the Council. However, the Dutch acknowledge this process does not easily accommodate judicial review.

1I. (S) PLEASE REPORT ON EU MEMBER STATES' INTEREST OR DISINTEREST IN ACCEPTING MEK REFUGEES FROM IRAQ.

(S) The Dutch are not permitted to accept refugees under the prohibitions of UNSCR 1373 -- the Dutch have "one of the toughest laws" on the admission of listed groups. The Dutch believe "many" MEK refugees are "really brainwashed" and would be difficult to integrate into the Netherlands. For example, the Dutch had already considered, and dismissed, the idea of accepting refugees in the FARC context, following the statements by French President Sarkozy.

1J. (S) PLEASE REPORT ON THE NATIONAL COUNCIL OF RESISTANCE OF IRAN (NCRI) MEK'S POLITICAL WING ACTIVITIES IN EUROPE.

(S) The NCRI has a "strong lobby" in Europe, as indicated by the action in the French parliament on July 16. Moreover, the MEK or NCRI was aware of the "secret" date and time for the meeting of the EU working group on the terrorist listings. Dutch MFA officials are frequently summoned to the First Chamber of the Dutch parliament to explain the Dutch position on the MEK. The MEK, and fundraising for the MEK, is prohibited, and Dutch law requires the government to act against the MEK. However, the Dutch cannot prohibit peaceful activities. This has caused friction with Iran (and in the context of the Tamil Tigers, with Sri Lanka). Iran has punished nations -- e.g., through delaying the accreditation of ambassadors -- whose MPs have met with MEK members.

1K. (S) PLEASE REPORT ON THE ACTIVITIES OF MEK LEADER MARYAM RAJAVI AND ANY OF HER PEERS OR SUBORDINATES AND THEIR ACTIVITIES IN FRANCE. DOES THE GROUP MAINTAIN AN ESTABLISHED NETWORK OR LEADERS, OR ARE MEK MEMBERS IN EUROPE SURVIVING IN ISOLATION FROM EACH OTHER? TO WHAT EXTENT DO MEK MEMBERS OR NCRI MEMBERS IN EUROPE COMMUNICATE WITH MEK MEMBERS IN IRAQ? IF AVAILABLE, ANALYSTS ARE ALSO INTERESTED IN INFORMATION ON MASUD RAJAVI'S WHEREABOUTS.

(S) Maryam Rajavi is "always" traveling through Europe, although the Dutch were surprised she visited the European parliament. She is not likely to come to the Netherlands. Masud Rajavi has not been seen recently and is "not likely" to be the MEK's leader. The MEK has no support among the Iranian people.
Culbertson